THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.23468 & 23591 OF 2006

ORAL COMMON ORDER:

These two writ petitions relate to grant of Form 2-B licence for establishment of a Bar & Restaurant at the premises bearing Door No. 17-2-14/2, Pedagantyada, Gajuwaka, Visakhapatnam.

Whereas, Writ Petition No.23468 of 2006 has been filed by the licensee, in whose favour permission was accorded by the Deputy Commissioner of Prohibition and Excise for grant of Form 2-B licence, aggrieved by the inaction of the Prohibition & Excise Superintendent, Gajuwaka, to take necessary action in terms of the order dated 1.11.2006, the Writ Petition No.23591 of 2006 has been filed by a School by name TNR Talent School, alleging that the licence proposed to be granted at the premises bearing Door No. 17-2-14/2, Pedagantyada, Gajuwaka, is in contravention of Rule 6 (1)(ii) of the Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short "the Rules").

It is alleged by the petitioner in W.P.No.23591 of 2006 that the premises in question, where the Bar & Restaurant is proposed to be established, is situated within 50 meters from the School, which is conducting classes from LKG to 10th Class for the last 5 years. Thus, it is contended that since the proposed premises is situated within 100 meters from an educational institution, grant of licence in Form 2-B is impermissible under Rule 6(1)(ii) of the Rules.

On the other hand, the petitioner in W.P.No.23468 of 2006 has pleaded that the Commissioner of Prohibition and Excise, AP, Hyderabad, granted prior clearance under the statutory Rules after being satisfied that all the statutory requirements are complied with including Rule 6(1)(ii) of the Rules and, thereafter, on the basis of the proposal submitted by the Prohibition & Excise Superintendent, the Deputy Commissioner of Prohibition and Excise, passed the order dated 1.11.2006 according permission for grant of Form 2-B licence.

In the circumstances, the learned counsel for the petitioner contended that Prohibition & Excise Superintendent is bound to issue Form 2-B licence and the objections said to have been raised by the petitioner-School on 7.11.2006 cannot be taken into consideration. It is also contended that as a matter of fact, the allegations made by the petitioner in W.P.No.23591 of 2006 are incorrect and without any basis.

Having heard the learned counsel for the petitioners in both the writ petitions, as well as the learned Government Pleader for Prohibition & Excise appearing for the respondents, I am of the opinion that it is neither possible nor proper for this Court to express any opinion as to the allegation that the premises in question is situated within the prohibited distance prescribed under Rule 6 (1)(ii) of the Rules.

Since, the officials, who are authorized under the statutory Rules, having conducted enquiry, have already granted prior clearance and necessary sanction has also been granted for issue of Form 2-B licence, there cannot be any impediment for grant of licence in favour of the petitioner in W.P.No.23468 of 2006, provided the licensee complies with all other statutory requirements. However, the fact that such licence is granted shall not preclude the licensing authority to enquire into the allegations made by the petitioner in W.P.No.23519 of 2006 following due process of law.

Accordingly, the writ petitions are disposed of with a direction to the Prohibition & Excise Superintendent, Gajuwaka to issue Form 2-B licence in favour of the petitioner in W.P.No.23468 of 2006 following due process of law forthwith, provided the petitioner satisfies the other requirements under the statutory Rules.

There shall be a further direction to the Deputy Commissioner of Prohibition and Excise, Gajuwaka, to consider the objections raised by the petitioner in W.P.No.23519 of 2006 in the representation dated 7.11.2006, and pass appropriate orders in accordance with law after affording due opportunity to the licensee to rebut the allegations made

therein. In case the allegations made in the complaint dated 7.11.2006 are found to be established, the Form 2-B licence, if any, granted pursuant to the order of this Court shall be reviewed. No costs.

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(G. ROHINI, J.)

13th November, 2006.
Operative portion by wire at party's cost.
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.23468 & 23591 OF 2006

13th November, 2006.

Writ petition No.23468 of 2006:

Between:

Botta Satyanarayana. .. Petitioner

And

The Commissioner of Prohibition and Excise,

Government of Andhra Pradesh, Hyderabad and
others. .. Respondents.

Writ petition No.23519 of 2006:

T.N.R. Talent School, (Regd.No.68/2002),
Opportunity: Fire Station, Pedagantyada,
Visakhapatnam –44, represented by its
Correspondent – T. Srinivasa Reddy. .. Petitioner.

And

The Commissioner of Prohibition and Excise,
Government of Andhra Pradesh, Nampally,
Hyderabad and others. .. Respondents.